

SERVICE DATE – JUNE 20, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-992X

ATLANTIC & PACIFIC RAILROAD AND TRANSPORTATION COMPANY—  
DISCONTINUANCE OF SERVICE EXEMPTION—IN RICE COUNTY, KS

Decided: June 19, 2006

By petition filed on March 2, 2006, Atlantic & Pacific Railroad and Transportation Company (APR), a Class III rail carrier, seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a 4-mile line of railroad owned by the Kansas & Oklahoma Railroad (KO) and located in Rice County, KS. The line extends from the point of interchange with KO's line at approximately milepost 87.0 (at or near Chase, KS), to the point of interchange with KO's line at approximately milepost 91.0 (at or near Silica, KS). Notice of the filing was served on March 22, 2006, and published in the Federal Register on March 23, 2006 (71 FR 14779). The exemption will be granted, subject to standard employee protective conditions.

BACKGROUND

In a prior proceeding, the Board approved the lease of the line by APR, a noncarrier at the time, from KO, a Class III rail carrier and subsidiary of Watco Companies, Inc.<sup>1</sup> APR asserts that there are currently no active shippers on the line and no rail service has been performed during the lease term. According to APR, upon discontinuance, KO, as owner, will continue to have the common carrier obligation to serve any shippers who might in the future request rail service.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without the Board's prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

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<sup>1</sup> See Atlantic & Pacific Railroad and Transportation Company—Lease and Operation Exemption—Kansas & Oklahoma Railroad, STB Finance Docket No. 34451 (STB served July 20, 2004).

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation is not necessary to protect shippers from the abuse of market power. There are no active shippers on the line, and any future request for rail service will be handled by KO. Given the finding regarding market power, it is not necessary to determine whether the proposed discontinuance is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), will be imposed.

Because this is a discontinuance proceeding and not an abandonment, the Board need not consider offers of financial assistance (OFAs) to acquire the line for continued rail service (the OFA provisions for a subsidy to provide continued rail service do apply to discontinuances), trail use requests under 16 U.S.C. 1247(d), or requests to negotiate for public use of the line. This proceeding is also exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b). Therefore, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by APR of its operations over the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

2. An OFA under 49 CFR 1152.27(b)(2) to subsidize continued rail service must be received by the railroad and the Board by June 30, 2006, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,300 filing fee. See 49 CFR 1002.2(f)(25).

3. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

4. Petitions to stay must be filed by June 30, 2006. Petitions to reopen must be filed by July 10, 2006.

5. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on July 20, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams  
Secretary